IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2631 of 1992

For Approval and Signature:

Hon'ble MR.JUSTICE H.K.RATHOD

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

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G S R T C

Versus

HIRJI DAMJI CHAMPANER

Appearance:

1. Special Civil Application No. 2631 of 1992

MR MD PANDYA for Petitioner No. 1

MR KISHOR M PAUL for Respondent No. 1

CORAM : MR.JUSTICE H.K.RATHOD

Date of decision: 19/03/2002

ORAL JUDGEMENT

Heard learned advocate Mr. M.D. Pandya for the petitioner and Mr. Paul for the respondent workman. By

way of this petition, the petitioner has challenged the award made by the Labour Court, Rajkot in Reference (LCR) No. 263 of 1988 dated 7th September, 1989 wherein the labour court has set aside the order of dismissal dated 5th September, 1987 and granted reinstatement in service from the date of dismissal with full back wages for the intervening period and cost of Rs.250.00 has been awarded. This petition was admitted by this Court by order dated 22nd January, 1993 as under:

"Rule.

Admittedly, the workman has been reinstated in service pursuant to the direction given by the Labour Court. Hence no interim relief as regards reinstatement of the workman. As far as payment of back wages is concerned, it is directed that the petitioner Corporation will be at liberty withhold the payment of backwages to the respondent workman on condition that in case the petitioner corporation loses in the petition, the amount of backwages directed to be paid by the Labour Court or any other amount as may be directed by this Court, shall be paid to the respondent workman with 12 % interest, which will be calculated from the date of the award."

Learned advocate Mr. Pandya has submitted that the labour court has erred in not appreciating the evidence which was led in the departmental inquiry by the corporation. He has submitted that two witnesses examined by the respondent workman in departmental inquiry have made statements which were contrary to the statements made on the spot and which were obtained by the checking inspector and, therefore, the officer declared them hostile. He has submitted that it is for the inquiry officer to appreciate the evidence which was led before him and to believe the evidence or not to believe the evidence which was led before him and, therefore, the inquiry officer has not believed the evidence of the passengers who were examined as defence witnesses and he has relied upon the evidence of the reporter and came to the conclusion that the respondent workman has recovered fare from six passengers and not issued luggage tickets and on that basis, charge sheet was issued and thereafter show cause notice was issued to the respondent and ultimately, the respondent workman was dismissed from service by the competent authority on 15th September, 1987. He has further submitted that the order of dismissal was passed by the disciplinary authority on the basis of the incident in question and also keeping in view the past record of the workman concerned. In past

also, he was dismissed and was taken back in service by the appellate authority and 17 misconducts of a similar nature were committed by the respondent workman and, therefore, the labour court has erred in not appreciating these aspects of the matter and has further erred in ordering for reinstatement of the respondent workman. He has also submitted that the labour court has erred in exercising the discretionary powers in favour of the workman under section 11-A of the Industrial Disputes Act, 1947 and, therefore, this Court should interfere with the award in question in exercise of the powers under Article 227 of the Constitution of India.

On the other hand, learned advocate Mr. Paul appearing for the respondent workman has submitted that the award has rightly been passed by the labour court after appreciating the evidence in departmental inquiry and the labour court has formed the conclusion that the charge levelled against the respondent workman has not been proved and, therefore, the labour court has granted reinstatement in service which is not required to be interfered by this court.

I have considered the arguments made by the learned advocates for the parties. I have also perused the award in question. The respondent workman was on duty on 8th January, 1985 on Dhoraji Dadvi Route, his bus had started from Dhoraji after booking was over and thereafter he had made closing of tickets at Mangdi and Taragada and, thereafter, his bus arrived at Raydi Stand. According to the workman, six passengers who were to go from Baydi to Boriya, boarded his bus and he issued tickets to them. According to him, after Raydi Stand, Patia of Fofad Dam stand were to be made at one stage. According to him, his bus was checked at Fofad Dam stand and false case was made out against him by the checking squad that six passengers of one group going from Dhoraji to Jam Kandorana were found without tickets and workman had recovered ticket fare from them in advance but he had not issued tickets to them. According to the workman as per his statement of claim before the labour court, a false case was made out against him that one passenger going from Dhoraji to Jam Kandorana had with him luggage weighing 100 kg. and the workman had recovered luggage fare from the passenger but had not issued luggage tickets to him dishonestly. According to him, statements of the passengers were not properly recorded by the checking party and therefore he was served with charge sheet and reply to the said chargesheet was given and thereafter no evidence was produced before the inquiry officer to support the report of the reporting officer

and yet he was dismissed by order dated 15.9.1985.

Before the labour court, the corporation has produced documents alongwith the list wherein in all 10 documents were produced at Exh. 9 to 18 and Exh. 17 is the default card of the respondent workman produced by the corporation before the labour court. I have considered the submissions made by Mr. Pandya for the petitioner in respect of his contention that the labour court has no power to reappreciate the evidence led in the departmental inquiry in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. This aspect has been examined by the apex court in case of Workmen of M/s. Firestone Tyre and Rubber Co. of India P. Ltd. versus The Management and others reported in A.I.R. 1973 S.C. page 1227 where answer has been given to this question in para 37 of the decision. Para 37 of the said decision is reproduced as under:

"37. We are not inclined to accept the contentions advanced on behalf of the employers that the stage for interference under Section 11A by the Tribunal is reached only when it has to consider the punishment after having accepted the finding of guilt recorded by an employer. It has to be remembered that a tribunal may hold that the punishment is not justified because the misconduct alleged and found proved is such that it does not warrant dismissal or discharge. The Tribunal may also hold that the order of discharge or dismissal is not justified because the alleged misconduct itself is not established by the evidence. To come to a conclusion either way, the Tribunal will have to reappraise the evidence for itself. Ultimately, it may hold that the misconduct itself is not proved or that the misconduct proved does not warrant the punishment of dismissal or discharge. That is why, according to us, section 11A now gives full power to the Tribunal to go into the evidence and satisfy itself on both these points. Now the jurisdiction of the Tribunal to reappraise the evidence and come to its conclusion enures to it when it has to adjudicate up on the dispute referred to it in which an employer relies on the findings recorded by him in a domestic enquiry, Such a power to appreciate the evidence and come to its own conclusion about the guilt or otherwise was always recognized in a Tribunal when it was deciding a dispute on the basis of evidence adduced before it for the first time.

Both categories are now put on a par by Section 11A."

Therefore, in view of the aforesaid decision of the apex court, said contention raised by Mr. Pandya has no merits and same is therefore rejected. The labour court can reappreciate the evidence led in the departmental inquiry and the labour court can come to its own conclusion in exercise of the powers under section 11-A of the Industrial Disputes Act, 1947. According to my opinion, the labour court has not committed any error in coming to the conclusion that the charge levelled against the respondent workman has not been proved and therefore, the labour court was right in awarding reinstatement with continuity of service. So far as that part of the award is concerned, learned advocate Mr. Pandya has not been able to point out any jurisdictional error and/or procedural irregularity committed by the labour court. However so far as the back wages are concerned, the labour court has granted full back wages for the intervening period from the date of the order of dismissal till the date of his actual reinstatement. Whether that part of the award is proper or not has been examined by this court. Before the labour court, in para 5 of the award, the petitioner corporation has produced documents vide list Exh. 8 which includes record of the workman concerned which was referred to in para 5 of the award. In para 5 of the award, the labour court has considered that in past 17 misconducts were committed earlier by the workman out of which 11 misconducts were similar to the one which has led in dismissal of the workman wherein minor punishments were imposed by the petitioner and once he was dismissed and then reinstated in service by the appellate authority. When the labour court has come to the conclusion that the reinstatement is the proper relief looking to the facts and circumstances of the case and the evidence which was led in the departmental inquiry then at the time of granting relief, the labour court ought to have considered such past record as per the default card but that aspect has not been taken into consideration by the labour court while granting relief. I have considered the entire award in question wherein there is no slightest discussion made by the labour court about the past conduct and past record of the workman which was very much before the labour court and, therefore, according to my opinion, considering the past record of the respondent workman, award of full wages made by the labour court is on higher side and, therefore, according to my opinion, same is required to be reduced by 50 per cent and if such directions are issued and award in question is modified

to that extent, that would met ends of justice. Thus, the award in question is required to be modified to that extent.

For the reasons recorded hereinabove, this petition is partly allowed. The award made by the labour court in Reference (LCR) NO. 162 of 1988 dated 7th September, 1989 is modified in so far as it relates to the back wages that instead of full back wages, the workman concerned is now entitled for 50 per cent of the back wages for the intervening period. It is clarified that the remaining part of the award i.e. award of reinstatement with continuity of service has not been disturbed by this Court. Rule is made absolute in terms indicated hereinabove with no order as to costs.

At this stage, learned advocate Mr. Paul appearing for the respondent workman has submitted that though the respondent has been reinstated in service, but his pay has not been fixed as per the directions issued by the labour court. Learned advocate Mr. Pandya for the petitioner has submitted that if this is so, then, same will be done by the corporation within some reasonable period. Considering the statements made by Mr. Paul and Mr. Pandya, it is directed to the petitioner to make fixation of salary of the respondent workman in accordance with the directions issued by the labour court under the impugned award within two months from the date of receipt of copy of this order and to pay consequential benefits accordingly.

At the time of issuing rule in this petition on 22nd January, 1993, interim relief qua back wages was granted by this Court on a condition that in case if the petitioner will lose in this petition, then, the amount of back wages payable to the respondent workman as per the award in question will be paid with 12 per cent interest to be calculated from the date of the award. Now, since this Court has allowed the petition in part and has interfered with the award in question qua back wages, is clarified that in view of such modification of the award in question, now the petitioner corporation is not required to pay the amount of back wages with 12 per cent interest thereon as directed by this Court by order dated 22nd January, 1993 but the petitioner will pay the amount of back wages as per the award in question as modified by this Court to the respondent workman as early as possible, preferably within two months from the date of receipt of the copy of this order.

Dt.19.3.2002. (H.K. Rathod,J.)

Vyas